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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA, ) CASE NO. 2:05-CR-022 FCD  
12 )  
Plaintiff, ) STIPULATION AND ORDER REGARDING  
13 ) THE DEFENDANT'S SUBMISSION OF  
v. ) DNA SAMPLES  
14 )  
ADRIAN LAMO, )  
15 )  
Defendant. )  
16 \_\_\_\_\_ )

17 The United States, by and through Assistant United States  
18 Attorney Heiko P. Coppola, and the defendant, by and through his  
19 counsel, Assistant Federal Defender Mary French, enter into the  
20 following stipulation regarding the defendant's submission of  
21 DNA samples:

22 1. A convicted felon such as the defendant, Adrian Lamo, is  
23 required to submit to DNA testing. The collection method  
24 currently used by the Federal Bureau of Investigation (FBI)  
25 involves taking a blood sample.

26 2. Mr. Lamo asserts that pursuant to his sincerely held  
27 religious beliefs, he is not able to provide a blood sample.

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1           3. In a recent case before Chief Judge David F. Levi,  
2 namely United States v. Elden Leroy Holmes, Case No. 2:02-CR-0349  
3 DFL, the Court addressed the issue of taking a DNA sample from an  
4 individual with a sincerely held religious belief against the  
5 drawing of blood. In that case, Judge Levi found that the  
6 government's requirement that the defendant submit his DNA sample  
7 through a blood sample imposed a substantial burden on his free  
8 exercise of religion in violation of the Religious Freedom  
9 Restoration Act ("RFRA"), 42 U.S.C. §§ 14132bb, et seq.

10           4. In light of Judge Levi's finding in United States v.  
11 Elden Leroy Holmes, the undersigned prosecutor is not convinced  
12 that the government can demonstrate a compelling interest in  
13 collecting DNA through a blood sample rather than by a buccal  
14 sample, in the face of defendant Lamo's assertion of a sincerely  
15 held religious belief against taking a blood sample. The  
16 government and the defendant agree that for the purpose of  
17 resolving this case, buccal samples will be collected from Mr.  
18 Lamo in lieu of providing a blood sample.

19           5. Accordingly, the parties seek an order requiring Mr. Lamo  
20 to submit to buccal sample collection within 30 days - on a date  
21 to be arranged through his counsel, the prosecutor and the  
22 probation officer - by reporting to the United States Probation  
23 Office in Sacramento, where eight (8) buccal swabs will be  
24 collected from Mr. Lamo by an authorized representative of the  
25 FBI, who will take custody of the swabs and make arrangements to  
26 have them transported to the FBI laboratory or its authorized  
27 representative. The eight samples will be taken to ensure that  
28 enough DNA material is collected to effectuate analysis and

1 storage of the DNA sample and to obviate the need to keep the  
2 violation petition open while the analysis and uploading to CODIS  
3 takes place - a process that will not happen immediately.

4 6. Additionally, the prosecutor will report to the Court,  
5 within five court days of Mr. Lamo's submission of the samples,  
6 that he has done so. The prosecutor shall simultaneously submit  
7 a proposed order for dismissal of the violation petition.

8 So stipulated.

9 DATED: June 19, 2007

McGREGOR W. SCOTT  
United States Attorney

11  
12 By /s/ Heiko P. Coppola  
Heiko P. Coppola  
Assistant U.S. Attorney

14 DATED: June 19, 2007

DANIEL A. BRODERICK  
Federal Defender

16  
17 By /s/ Mary French  
Mary French  
Assistant Federal Defender  
Counsel for Defendant  
Signed per email authority by  
19 Heiko P. Coppola

20 ORDER

21 Mr. Lamo is ordered to submit to buccal sample collection by  
22 reporting, within 30 days of the issuance of this order - on a  
23 date to be arranged through his counsel, the prosecutor, and the  
24 probation officer - to the United States Probation Office in  
25 Sacramento, where eight (8) buccal samples will be collected from  
26 Mr. Lamo by an authorized representative of the FBI, who will  
27 take custody of the samples and make arrangements to have them  
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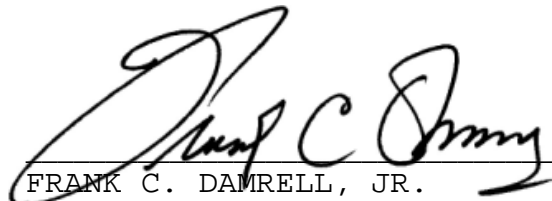
1 transported to the FBI laboratory or its authorized  
2 representative.

3 The prosecutor is directed to report to the Court, within  
4 five court days of Mr. Lamo's submission of the samples, that he  
5 has done so. The prosecutor shall simultaneously submit a  
6 proposed order for dismissal of the violation petition.

7 The status conference set for June 25, 2007 is VACATED and  
8 RESET for Monday, July 30, 2007 at 10:00 a.m. If the dismissal  
9 of the petition is received prior to the status is will be  
10 vacated.

11 IT IS SO ORDERED.

12 DATED: June 21, 2007

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15 FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE  
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